

Exhibit 9

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
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4 RICHARD E. KAPLAN,)
5 Plaintiff,)
6 vs.) CA No. 04-10402
7) 05-10320
8 FIRST HARTFORD CORPORATION,)
9 Defendant.)

10 BEFORE: THE HONORABLE NATHANIEL M. GORTON

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12 HEARING ON MOTION TO COMPEL
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14

15 John Joseph Moakley United States Courthouse
16 Courtroom No. 4
17 One Courthouse Way
18 Boston, MA 02210
19 Friday, May 12, 2006
20 2:36 P.M.

21 Cheryl Dahlstrom, RPR, RMR
22 Official Court Reporter
23 John Joseph Moakley United States Courthouse
24 One Courthouse Way, Room 3209
25 Boston, MA 02210
Mechanical Steno - Transcript by Computer

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1 APPEARANCES:

2 CHOATE, HALL & STEWART
3 By: Larry C. Kenna, Esq., and
4 Robert Rothberg, Esq.
5 Two International Place
6 Boston, Massachusetts 02110
7 On behalf of the Plaintiff.

8 DAY, BERRY & HOWARD, LLP
9 By: Jonathan I. Handler, Esq., and
10 Jillian B. Hirsch, Esq.
11 One International Place
12 Boston, Massachusetts 02110
13 - and -
14 (By Telephone)
15 DAY, BERRY & HOWARD
16 By: John B. Nolan, Esq.
17 City Place I
18 Hartford, Connecticut 06103-3499
19 On behalf of the Defendant.
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1 P R O C E E D I N G S

2 THE CLERK: Civil Action 04-10402, Richard Kaplan vs.
3 First Hartford. Will counsel please identify themselves for
4 the record.

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5 MR. KENNA: Your Honor, my name is Larry Kenna,
6 K-E-N-N-A. I represent the plaintiff, Mr. Kaplan, in these
7 consolidated cases.

8 THE COURT: Good afternoon, Mr. Kenna.

9 MR. KENNA: My partner, Mr. Rothberg, Robert Rothberg,
10 is here with me.

11 THE COURT: And Mr. Rothberg, good afternoon to you.

12 MR. HANDLER: Good afternoon, your Honor. Jonathan
13 Handler for the defendant, First Hartford Corporation. My
14 colleague, Jillian Hirsch, is with me. My partner, John Nolan,
15 is on the phone.

16 THE COURT: All right. Good afternoon to you, then,
17 Mr. Handler, Miss Hirsch, and, on the phone, Mr. Nolan.

18 MS. HIRSCH: Thank you, your Honor.

19 THE COURT: We are here as a result of a filing
20 earlier this week in my absence. I've been out of town for a
21 couple of days. And the plaintiff has filed a motion to compel
22 the production of documents by the defendant, First Hartford
23 Corporation, to which the defendant has filed an opposition.
24 This is all in conjunction and related to this jury-waived
25 matter that is scheduled to go to trial next Monday morning,

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1 that is, at 9 a.m. on the next business day from now.

2 I think it is unfortunate that I have to deal with
3 this at the last minute and that counsel have not been able to
4 resolve the issue before now. The fact that this is a
5 jury-waived and not a jury trial makes it less -- I don't
6 know -- perhaps time-sensitive than it would otherwise have
7 been if we were about ready to empanel a jury.

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8 But as I understand it, the plaintiff, after we had
9 the final pretrial conference a couple of months ago, at which
10 time I led counsel to understand that I was going to further
11 consolidate the two prior filed cases with the more recently
12 filed case -- we've been calling them Kaplans I, II and III --
13 and to try to expedite the resolution of all three at the same
14 time. I did give the plaintiff an opportunity to take some
15 limited further discovery in matters related to the third-filed
16 case, which, in turn, related to a shareholders' meeting that
17 occurred in -- I believe it was November of 2005.

18 The issue now comes to my attention that -- and I
19 guess I was aware of this before -- that there is a related
20 case pending in the United States District Court for the
21 District of Maine, I believe, that involved precisely the same
22 parties with the exception that, as I understand it, in the
23 Maine case, the individual president of the defendant
24 corporation is also named as a party. And there has been some
25 at least limited discovery in that case.

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1 And now the plaintiff wants to discover information
2 that has been already discovered in that case, and the
3 defendant objects because there is a protective order in the
4 Maine case resulting from a nondisclosure agreement between the
5 parties that prevents the use of any information that is
6 disclosed in connection with that protective order.

7 It's always been my impression -- and I must say I
8 haven't had a lot of experience with protective orders -- that
9 the reason for the protective order in the first place is to
10 prevent the divulgence of information that is confidential to
11 one or both of the parties involved in litigation, the

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12 divulgence of such information to third parties or to the
13 public that has no need to know the information.

14 That does not seem to me to relate to this specific
15 case where we have precisely the same parties involved in this
16 litigation and that information at least the plaintiff alleges
17 to be relevant and thinks would be relevant to its claims here
18 -- or his claims here would not be somehow producible.

19 I just don't understand how the defendant can rely on
20 a protective order to prevent the plaintiff, who is the
21 identical party to the nondisclosure agreement in Maine, from
22 getting and/or at least discovering information in this case
23 that is relevant to his claims.

24 As I understand it, he's claiming he believes that
25 there were certain financial transfers between the corporate

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1 defendant and either subsidiaries of that defendant or somehow
2 related corporations or limited partnerships to relatives of
3 the president of the defendant corporation that would affect
4 the financial standing of the company and the proxy statements
5 that were entered by that company in connection with the annual
6 meetings that are the subject matter of this litigation.

7 So I start off with a puzzlement as to why there
8 should be this dispute of disclosing information that's already
9 previously disclosed and that doesn't seem to me to offend the
10 purpose of the protective order in the Maine case in the first
11 place.

12 Let me hear from Mr. Nolan in that regard.

13 MR. NOLAN: Your Honor, I believe there are two
14 aspects to the dispute. First of all, the protective order is

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15 very specific in the Maine case and limits confidential
16 materials to be used only for the purpose of the Maine
17 litigation. And that was negotiated --

18 THE COURT: Mr. Nolan, does that prevent me from
19 allowing the plaintiff to have access to information that he
20 already has access to in the Maine case? Are you suggesting
21 that I don't have the authority to ignore or at least not abide
22 by the protective order that's entered in another case between
23 the same parties?

24 MR. NOLAN: No. I think I am suggesting, your Honor,
25 first of all, the cases are not congruent 100 percent.

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1 THE COURT: Are the parties congruent?

2 MR. NOLAN: The parties are congruent, your Honor.
3 And I think that what should have happened, if the plaintiffs
4 wished to have relief from the order in the Maine case, that
5 they would have gone to the Maine court to do that. This
6 all --

7 THE COURT: They tell me that they asked you for leave
8 to do that and you denied it. Is that true?

9 MR. NOLAN: No, I don't believe that is true, your
10 Honor.

11 THE COURT: Well, didn't you say that, Mr. Kenna, that
12 you asked opposing counsel for leave to have that information
13 disclosed?

14 MR. KENNA: We did, your Honor. We asked if they
15 would -- first of all, we requested the documents in these
16 cases, all right, the documents that we're talking about here.

17 THE COURT: They told you they would not do it because
18 it was subject to a protective order. Did you ask them for

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19 relief from the protective order?

20 MR. KENNA: We asked them to agree with us that we
21 could use these documents in the -- in these Massachusetts
22 proxy fraud cases, which is the same thing to me, your Honor.
23 we asked them -- we didn't say, Let's go to the judge up in
24 Maine and amend it. We said, we don't need to do that. Will
25 you agree with us that we can use these documents in this

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1 litigation?

2 THE COURT: Mr. Nolan, go ahead.

3 MR. NOLAN: Okay. I would agree with that statement,
4 and that was not as I heard your question to me.

5 In any event, we were in the period of time on Kaplan
6 III, and you, at our April 6th pretrial, were very explicit
7 about what could and could not be discovered during the short
8 period of time that we had between April 6th and starting this
9 trial. And the -- we do not believe that the materials that
10 are in dispute fell within the area that you permitted
11 discovery.

12 THE COURT: Well, let me ask you this, Mr. Nolan. If
13 -- I'm using this only as a hypothetical because I don't know
14 what any of this documentation is going to show. But if the
15 documentation that is sought by the plaintiff relates to the
16 completeness of the proxy statement that was issued before the
17 November, 2005, meeting, relates to some financial standing of
18 the defendant -- and that's what the case is all about -- why
19 isn't -- why isn't that information in the Maine case relevant
20 to Kaplan III?

21 MR. NOLAN: It was not requested in Kaplan III.

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22 THE COURT: It wasn't requested in Kaplan III?

23 MR. NOLAN: I don't believe so. I think we provided
24 information and -- I don't want to pass this off on Mr. Handler
25 but he's there and I'm not. My recollection is that we fully

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1 complied with Kaplan -- with the request he made in Kaplan III.

2 THE COURT: Kaplan III is now Kaplan I, II and III.
3 They are consolidated cases. If it is at all relevant -- and I
4 am not in a position to make a determination at this stage
5 certainly that it is not. But if it is relevant, then even my
6 limited order, which did, in fact, limit Mr. Kenna and the
7 plaintiff to making discovery with respect to Kaplan III -- if
8 it has anything to do with the financial standing of the
9 corporation, the proxy statement of which was issued before the
10 November, 2005, meeting, then that material -- then that
11 documentation is relevant and discoverable under my prior
12 order.

13 And the long and the short of this is, unless I am
14 missing something, that documentation is to be produced between
15 now and Monday morning at 10 a.m., which is when we're going to
16 start this trial. I need to conduct some other business before
17 we start on Monday, so we're going to delay it by one hour.
18 10:00 we'll start. Between now and then, that documentation
19 will be produced for the plaintiff in a form that would lend
20 itself to confidentiality. If one or both of the parties want
21 to file a motion for a protective order in this --

22 MR. KENNA: We have one in this case. We have one in
23 this case.

24 THE COURT: Well, if you have one in this case, then
25 you don't need anything else. But it will be subject to the

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1 protective order in this case as well as the case in Maine, but
2 it will be produced for the plaintiff in appropriate form and
3 in appropriate time for him to prepare his case. That means
4 you have 24 hours. It will be produced by --

5 MR. NOLAN: Your Honor, as a practical matter, they
6 already have the pieces of paper.

7 THE COURT: Okay. Then we don't have to worry about
8 it.

9 MR. KENNA: I'm sorry. We don't, your Honor. We do
10 have the documents that have been referenced as having been
11 produced in the Maine litigation. But there was another aspect
12 -- there were just the two things. The Richmond Realty
13 documents, what we received -- what was produced in response to
14 our request for production was a -- I forget the dates on it,
15 but we wanted the prior -- the ledgers from the prior year,
16 which would actually be the year covered by the meeting and the
17 proxy statement for the -- for Kaplan III.

18 So we asked for the prior ledgers. That's what we're
19 looking for and that's what we want produced. What we have is
20 later -- is a later period of time. Maybe Mr. Rothberg can --

21 THE COURT: We're going to have one attorney speak for
22 each side.

23 MR. KENNA: That's the explanation for it. They know
24 exactly what we're looking for. They do exist. We went
25 through the depositions. We asked their corporate officers.

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1 Yes, we have ledgers for the prior year. They would be
2 relevant, your Honor. We specifically asked for them. Counsel
3 knows specifically --

4 THE COURT: Those additional ledgers will also be
5 produced by sometime midday tomorrow.

6 There is this other issue -- I don't know if it
7 remains an issue now -- and that is, with respect to the
8 corporate control dispute. It does seem to me that there is a
9 genuine issue as to whether First Hartford "controls" this
10 Lubbock organization -- I can't remember whether it's a
11 partnership or whatever it is -- either through the president's
12 -- the president of Hartford's personal ownership of a limited
13 partnership interest or First Hartford's subsidiary's general
14 partnership interest.

15 As I read the papers, it sounds to me like a wholly
16 owned subsidiary of First Hartford is the general partner of
17 the Lubbock outfit, which would make -- make it seem to me that
18 any financial transactions of Lubbock involving transfers of
19 money to the president of Hartford's daughters would be
20 relevant if it has a bearing on the financial status of First
21 Hartford, which it may well. I can't tell now, but it's
22 certainly discoverable. And that issue doesn't seem to me to
23 warrant reason for the defendant to decline to produce
24 something on the grounds that they don't control the corporate
25 entity or the partnership entity that is at stake.

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1 So unless I've missed something, defendants -- if you
2 want to make a further statement in this regard, Mr. Nolan,
3 I'll hear you, but I don't think we need to extend this hearing
4 much longer. Mr. Nolan.

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5 MR. NOLAN: No. I would say, your Honor, that you put
6 your finger on one of the issues in the case, and that is, I
7 suppose, a mixed question of fact and law, and that is, what
8 "control" means. And our position on that issue was stated in
9 the papers, and I heard what you just said. So we will produce
10 the documents.

11 THE COURT: All right. As I understand it, then, on
12 Monday morning the plaintiff will commence its case. You did
13 submit to me -- I'm not sure if I have it here on the bench.
14 Yes, I do. You did inform me as to who is going to be called,
15 but I've lost track of it. Mr. Kenna, who are you going to be
16 calling first?

17 MR. KENNA: We'll call the plaintiff, Mr. Kaplan.

18 THE COURT: How long will his direct examination be?

19 MR. KENNA: Less than 30 minutes.

20 THE COURT: Cross-examination, approximately, Mr.
21 Nolan?

22 MR. NOLAN: Roughly the same, your Honor.

23 THE COURT: After that?

24 MR. KENNA: We're going to call Stuart Greenwald,
25 who's one of the officers and directors of the company. In

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1 fact, all of our witnesses are officers and directors of the
2 company, and there are only three in addition to Mr. Kaplan.

3 THE COURT: And their direct examinations will take
4 approximately how long?

5 MR. KENNA: I thought about -- I thought about Mr.
6 Greenwald and Harding sort of together and thought my
7 questioning couldn't take much more than two hours of those two

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8 witnesses. And then we have Mr. Ellis, which might be, you
9 know, another hour or a little bit more of an hour of my
10 questioning of those witnesses.

11 THE COURT: So it is -- I take it the
12 cross-examination will be roughly the same, Mr. Nolan?

13 MR. NOLAN: At the most, your Honor.

14 THE COURT: Then how is this case a three-day trial?

15 MR. KENNA: This case is shaping up to conclude on
16 Monday if we can move it along.

17 THE COURT: All right. That's fine with the Court.
18 You have submitted, in accordance with my requests, proposed
19 findings of fact and conclusions of law. I will allow you to
20 supplement those at the end of the trial, but I will review
21 them between -- hopefully, between now and the end of the
22 trial.

23 Is there anything else that needs to come to my
24 attention before we adjourn?

25 MR. NOLAN: Yes, your Honor. Mr. Kenna's comment

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1 about the case being completed on Monday, do I understand that
2 you stop around 3:30 in the afternoon?

3 THE COURT: Yes. I'm not going to -- let me ask my
4 deputy.

5 (Discussion held off the record.)

6 THE COURT: We'll go till between 3 and 3:30. I'm not
7 sure exactly when, but we will have an afternoon session.
8 We'll start at 10, go for an hour or so, take a break, go till
9 1:00 for the lunch break, come back at 2 and go till 3 or 3:30.

10 MR. NOLAN: In that regard, I don't think we will
11 finish on Monday.

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12 THE COURT: Well, okay. If we don't, we'll go into
13 Tuesday and we'll finish on Tuesday.

14 MR. KENNA: Yes.

15 THE COURT: Anything further?

16 MR. HANDLER: Your Honor, we had two very brief items.

17 THE COURT: It's Mr. Handler?

18 MR. HANDLER: I'm sorry. Mr. Handler, your Honor.

19 The first one is, your Honor, we received from Mr. Kenna by
20 hand just a little bit before we came over a list of what looks
21 to me like sort of an exhibit list. I have not had the
22 opportunity to compare this to the exhibit list that both
23 parties submitted as part of their joint pretrial or, I should
24 say, their separate pretrial since we didn't do it together.

25 It's my understanding that, absent good cause,

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1 documents that are added now, a day before trial, ought not to
2 be admitted on Monday. I'm merely flagging the issue. I don't
3 know for a fact --

4 THE COURT: What have you done, Mr. Kenna? What are
5 the additional exhibits?

6 MR. KENNA: There aren't any. Every piece of paper
7 that we have obtained in this litigation, your Honor, came from
8 the defendants, all right. And I went back to the pretrial
9 memoranda that we both submitted and pointed out to Mr.
10 Handler, by a letter hand-delivered today, which one of those
11 items that we would be -- may introduce at the trial. It's not
12 going to be a big document case, your Honor. I don't think
13 it's going to be a huge document case.

14 I put a few other things on there that relate to the

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15 documents or that are either documents that we received after
16 the April 6th pretrial, only, you know, relating to the third
17 meeting. We hadn't, you know, put anything --

18 THE COURT: These are documents relating to the --
19 your discovery since April 6th?

20 MR. KENNA: Since April 6th.

21 THE COURT: They've been produced to the defendant, I
22 take it?

23 MR. KENNA: They're all their documents.

24 THE COURT: Okay.

25 MR. KENNA: They're their documents, your Honor. No

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1 surprises there.

2 THE COURT: I will allow you to supplement the exhibit
3 list to that extent.

4 Anything further, Mr. Handler?

5 MR. HANDLER: That's it, your Honor. Thank you.

6 THE COURT: All right. We're adjourned.

7 (Whereupon, at 2:57 p.m. the hearing concluded.)

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I, Cheryl Dahlstrom, RPR, RMR, and Official Reporter
of the United States District Court, do hereby certify that the
foregoing transcript, from Page 1 to Page 16, constitutes, to
the best of my skill and ability, a true and accurate
transcription of my stenotype notes taken in the matter of
Civil Action Nos. 04-10402, 05-10320, 06-10424, Richard E.
Kaplan vs. First Hartford Corporation.

Cheryl Dahlstrom, RPR, RMR
Official Court Reporter

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